

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

THU KAW,

Plaintiff,

v.

**TYSON FRESH MEATS, INC. and
HNAIR LING,**

Defendants.

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Civil Action No. _____

JURY DEMANDED

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1446**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Please take notice that Defendant Tyson Fresh Meats, Inc. (“Defendant” or “Tyson”), removes to this Court the state court action described herein.

I. Background

1. On February 10, 2022, an action was commenced in the 251st District Court in and for Potter County, Texas, entitled *Thu Kaw v. Tyson Fresh Meats, Inc.*, as Cause No. 110829-C-CV (the “Original Action”). Defendant removed the Original Action to this Court on March 2, 2022, which was within the 30-day period stipulated by the rules. *See* Notice of Removal of Action under 28 U.S.C. § 1446, *Kaw v. Tyson Fresh Meats, Inc.*, 2:22-c-00033-Z [Doc. No. 1].

2. On March 7, 2022, Plaintiff voluntarily dismissed the Original Action without prejudice. *See* Plaintiff’s Notice of Dismissal, *Kaw v. Tyson Fresh Meats, Inc.*, 2:22-c-00033-Z [Doc. No. 4].

3. On March 8, 2022, Plaintiff filed a new suit in the 181st District Court in and for Potter County entitled *Thu Kaw v. Tyson Fresh Meats, Inc. and Ling Hnair* bearing Cause No. 110866-B-CV (“the Current Action”).

4. In a brazen attempt to avoid the impact of Defendant’s removal of the Original Action to this Court, Plaintiff added Ling Hnair, his supervisor, as defendant in the Current Action.

5. Plaintiff has not yet served either Defendant in the Current Action.

6. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332 and is one which may be removed to this Court by Tyson pursuant to the provision of 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441 in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

7. All pleadings, process, orders, and all other filings in the state court action are indexed and attached to this notice as required by 28 U.S.C. § 1446(a). (Exhibits A-C).

8. Removal to this Court is proper irrespective of the presence of Hnair Ling as a named defendant pursuant to the doctrine of “snap removal.” Tyson is a non-forum state-court defendant in the Current Action. Plaintiff has filed its suit in state court, but has not formally served either Defendant. *Serafini v. Sw. Airlines Co.*, 485 F. Supp. 3d 697, 700 (N.D. Tex. 2020) (ruling that snap removal allows a defendant to circumvent the forum-defendant rule by removing cases to federal court on diversity grounds before the plaintiff joins the forum-state defendant through service); *see also Tex. Brine Co., L.L.C. v. Am. Arbitration Ass’n, Inc.*, 955 F.3d 482 (5th Cir. 2020) (holding that a diverse defendant may remove a case before the non-diverse defendant is served). Thus, even assuming Hnair Ling is a citizen of the State of Texas the Court has jurisdiction under 28 U.S.C. § 1332.

9. Defendant will promptly file a copy of this notice of removal with the clerk of the state court in which the action was filed.

II. There is a complete diversity of citizenship between the Plaintiff and Defendants.

10. The Federal Rules provide that a defendant may remove any civil action filed in state court where there is complete diversity of citizenship between the defendants and the plaintiff. 28 U.S.C. § 1441(a) and (b).

11. Complete diversity exists here because Defendant does not share the same state of residency and/or citizenship as Plaintiff. 28 U.S.C. § 1332(a).

12. Plaintiff is either a citizen of the state of Texas or a citizen of a foreign state who is lawfully admitted for permanent residence and is domiciled in the State of Texas. 28 U.S.C. § 1332(a)(1)-(2).

13. Defendant Hnair Ling's citizenship is disregarded because he has not yet been properly served. *Serafini*, 485 F. Supp. 3d at 700. On information and belief, Defendant Hnair Ling is either a citizen of the state of Texas or a citizen of a foreign state who is lawfully admitted for permanent residence and is domiciled in the State of Texas.

14. Tyson Fresh Meats, Inc. is a Delaware corporation with a principal place of business in Springdale, Arkansas. Thus, it is a citizen of Delaware and Arkansas. 28 U.S.C. § 1332(a)(c)(1).

III. The amount in controversy is in excess of \$75,000.

15. Plaintiff's Original Petition states that the amount sought in this lawsuit is over \$1,000,000.00, which is in excess of \$75,000.00.

Respectfully submitted,

/s/ C. Jason Fenton

Kelly Utsinger

Texas Bar No.: 20416500

kelly.utsinger@uwlaw.com

C. Jason Fenton

Texas Bar No.: 24087505

jason.fenton@uwlaw.com

Jake B. Ware

Texas Bar No.: 24125956

Underwood Law Firm, P.C.

P.O. Box 9158

Amarillo, TX 79105

(806) 376-5613

(806) 379-0316 – FAX

Counsel for Tyson Fresh Meats, Inc.

CERTIFICATE OF SERVICE

I hereby certify that that on the 8th Day of March 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. The following were served by the CM/ECF system and by email:

Blake A. Scott

Taylor L. Seaton

Dean Boyd

blake@deanboyd.com

taylor@deanboyd.com

dean @deanboyd.com

Attorneys for Plaintiff

/s/ C. Jason Fenton

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Exhibit	Description
Exhibit A	Cause No. 110866-B-CV; <i>Thu Kaw v. Tyson Fresh Meats, Inc. and Ling Hnair</i> , in the 181 st District Court In and for Potter County, Texas; Plaintiff's Original Petition.
Exhibit B	Cause No. 110866-B-CV; <i>Thu Kaw v. Tyson Fresh Meats, Inc. and Ling Hnair</i> , in the 181 st District Court In and for Potter County, Texas; Request for Issuance (Plaintiff's Original Petition) Ling Hnair.
Exhibit C	Cause No. 110866-B-CV; <i>Thu Kaw v. Tyson Fresh Meats, Inc., and Ling Hnair</i> , in the 181 st District Court In and for Potter County, Texas; Request for Issuance (Plaintiff's Original Petition) Tyson Fresh Meats, Inc.